## ZONING BOARD OF ADJUSTMENT SEPTEMBER 2, 2015 MEETING DRAFT MINUTES

Board members present included Chairman Christopher Carley, Stephen Norton, Nicholas Wallner, Andrew Winters, and James Marshall. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

**28-15** Cathy Champagne for Papa John's: Applicant wishes to install a freestanding sign and requests a Variance to Article 28-6-9(c), Permitted Freestanding Signs, Section (2), to permit a freestanding sign to be placed so that the box is within 0.2 feet (2.4 inches) of the front property and 4.76 feet from the north property line when it is prohibited to place any freestanding sign so that any point of the sign is within 5 feet of any lot line, for property located at 234 North Main Street in a CU Urban Commercial District.

Cathy Champagne of Jutras Signs testified. Bob Baskerville of Bedford Design Consultants also testified. The sign has been in place for quite some time. It's a legally permitted non-conforming sign per City records. Face panels are allowed to be changed on the existing sign, but they would like to replace it in its entirety. The sign there is quite old and the new branding does not allow them to use the existing sign cabinet. Where the sign is located now is the best spot and they would like to maintain the existing sign location. It will not impact parking areas if it stays in the same location.

Wallner asked if it was the same location and the same pedestal. Walker: said that they are removing the box and once they do that they have to comply with current setbacks. They will relocate, but it still will not meet current setbacks. Cathy Champagne stated that the sign there has a support that is slightly off set. The sign support is not in the middle. The new sign is more centered. Wallner asked how far the pole is moving from its current location. Robert Baskerville stated that the post is now 5.2 feet from the right of way but the edge of the box is just .2 feet away. The proposed sign shows the front of the box staying right where it is. The box will be longer and will go back further and if they center the post it moves further from the right of way. Marshall asked Walker if the sign conformed in size and height. Walker said yes.

In favor: none.

In opposition: none.

Code: Walker explained that any non-conforming items removed are treated as if they did not exist and have to be replaced on conformance with current codes or come before the Board.

Marshall asked what the height was from the ground to the existing sign. Ms. Champagne stated that the new sign is 15 feet to the top. The existing sign is 17'7". Norton asked why they couldn't move it within the appropriate standards. Baskerville stated that if they did that they would lose parking spaces and they cannot give up the parking spaces. Walker stated that there were gas and water connections that made it so that they could not move it to meet the proper setbacks as originally proposed on the other side of the parking lot.

DECISION: A motion to approve the request was made by Wallner, seconded by Winters and passed by a unanimous vote. The request meets criteria 1-5. There are special conditions on the property that make compliance difficult and impractical and the proposed location is the most reasonable considering the existing conditions. This is less intrusive than what is there now.

**29-15 Jim Netto:** Applicant wishes to legitimize an existing pergola and requests a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a structure with a 6" side and a 6" rear setback for footings and no setback for the rafter extensions where a 10' side and 20' rear setback would be required for property at 52 Chesley Street located in an RD Residential Downtown District.

Jim Netto testified. Carley asked if the pergola was already constructed. Mr. Netto said it was. He and his wife rented the house shortly after they were married. They are a family of 6. They rented the house August 2006. In December 2007 his wife took ill and lost her job. In 2007 their landlords forgave them a full month's rent so to try and repay their landlord they built this structure on the property, thinking that in the future the landlords could use this to attract a better tenant when they left. Eventually though they bought the property from their landlord. He didn't realize there were setback ordinances, etc. Not knowing, and there are other structures close to property lines in the area, he naively constructed the pergola. He didn't realize they needed a permit or a variance. It isn't embedded into the ground, but in 5 gallon buckets of cement. Carley asked when it was built. Mr. Netto said he built it in 2011. He built it himself; his own design. They finalized construction in time for their 5 year wedding anniversary and to use it as the area to renew their vows under. He replaced the fence that was there. They spent thousands of dollars to upgrade and beautify the property. They are a single family dwelling surrounded by multi-family dwellings.

Carley asked how this came to the attention of the City. Mr. Netto is not sure. He has had a disruption of their relationship with one of his neighbors. It was at the time that he replaced the fence. He put the pickets on the inside instead of the outside. He replaced it exactly the way it was. Norton asked if there were any roof or slant or water flow. Mr. Netto said that he does have a half section similarly pitched roof. He has a gutter and drainage. Norton asked if the runoff was going away from his property. Mr. Netto said that the water is running down the side and towards the back. None runs over to the neighbor's property. Marshall asked when they purchased the property. Mr. Netto said that it had.

In favor: none. A letter was submitted from Walter Warriner of 51 Chesley Street.

In opposition: none. A letter was submitted from Suzanne Isabelle and Lisa Laughy of 18 Thompson Street. They had concerns with the impact of the structure on their property. They said it was built flush with the property boundary. It is a large structure in excess of 200 s.f. The addition of the roof makes it seem more like a semi enclosed porch/gazebo vs. a pergola. If there were a fire, the presence of this structure would aid a fire, not deter it. The coverage has an impact of their property regarding snow removal, etc. Snow and rainwater flow onto their property. Mr. Netto throws snow over the fence onto their yard. The Netto's social life has an impact on the use of their backyards. They see the gutter and corrugated plastic roofing, which is not beautiful.

Code: none.

Rebuttal: Mr. Netto said that there is a disconnect with his neighbors in the rear of his property. The fence seems to have been the start of it. They do not allow people that smoke on their property so there should not be cigarette butts running into their neighbor's yard. He did erect the roof but took pain and consideration for his neighbor's property with regard to water flow; he put a gutter up to catch it. The snow that he rakes off of the pergola comes into his property and melts through the pavers he has in place. He has not intentionally pushed snow onto the neighbor's property however there had been an incident. The roof pitch on the clear plastic that he put up is consistent with his neighbor's porch and the rear neighbor's garage pitch. It's a consistent angle for all the roof lines in the neighborhood.

Norton asked why he didn't pitch it back towards his house or towards the front of his house. Mr. Netto said that generally they sit in the back side and look forward. The wind blows towards Chesley Street and it seemed like a logically pitch for the roof. Prior to this structure being built, if the neighbors had looked over the fence line into his property there would have been less of an inviting view.

DECISION: Winters asked Walker why this wasn't an equitable waiver vs. a variance. Walker said that because this was done without permits and there was a failure to inquire it is put forward as a variance. Marshall has fewer objections to the open pergola vs. the part of the pergola with the roof on it. The roof, which was added after they purchased the property, brings it to another level. He wouldn't be opposed to granting the variance for the pergola but request they remove the roof. Carley's not sure the Board can do that. He thinks they could deny the variance, making the observation that the roof is a significant reason why and they could revise the design and come back. Marshall said that this is not permanently attached to the ground, but could they move it 5 or 6 feet away from the neighbor's line. Carley said that was a new case. Wallner has the same concerns regarding the proximity and the roof. Winters concern is with the proximity. If the Board looked at it as if it hadn't been built they would have to look at it a bit different. Carley in the past the Board has considered lot size and configuration as a hardship. Norton said that this one materially impacts the surrounding property boundaries. Carley doesn't think that the presence of this little garden and the pergola is inconsistent with the intent of the Ordinance. He does have concern with water run-off. The density of the neighborhood is one of the things the Ordinance tries to deal with. The use of it is not an issue. He feels the roof is the issue. Winters asked if they were denied, would they have to immediately take it down. Walker said that if they came back with another plan, Code Administration wouldn't start enforcement actions. Code would rather see a reasonable resolution vs. enforcement action.

A motion to deny the request was made by Marshall. He feels it is an unusual negative impact on the neighborhood and there shouldn't be a roof on the structure. The motion was seconded by Wallner and passed by a unanimous vote.

## **30 - 15** Charles and Mary Willeke: Applicant wishes to expand and existing single-family dwelling and requests the following:

- 1. Variance to Article 28-3-2(J), Substantial Improvements to Existing Residential Structures in the (F1) Floodplains, to permit "substantial improvements" to an existing structure which exceed 50% of the market value of the structure;
- 2. Variance to Article 28-3-2(f), Development Standards in the Flood Hazard (FH) District, and 28-2-2(b)(4), Residential Neighborhood District (Purposes), to permit "substantial improvements" to an existing structure without extending and connecting to the municipal sewer as required,

for property at 28 Portsmouth Street in an RN Residential Neighborhood District with an F1 Flood Hazard Overly.

Charles and Mary Willeke testified. They would like to expand their small home. They want to add about 500 s.f. to their ranch. They have 2 young daughters. They want to add a bathroom. They currently share one bathroom. They want to add a family room. The sound in the ranch travels completely through the house and they are trying to create a little separation by putting a family room away from the sleeping quarters. Their property is close to the conservation center. 28, 29 and 30 Portsmouth Street do not have sewer as the sewer line stops before their property. The house was built in 1959 and they are only the 2<sup>nd</sup> owners. The home is well

built but dated. They want to insulate better and replace electrical wires. They want to replace the roof and fix attic ventilation problems. They would like to modernize their home and make it a little larger. They love the neighborhood and would like to make their home work for them. The Flood Hazard Ordinance is complex. He's tried to understand it. The entire Portsmouth Street neighborhood is probably out of conformance with this new ordinance. It is a hardship to connect to the City sewer system. Craig Walker gave them a base flood elevation of 238.8 feet. Walker said that is the Army Corp of Engineer's number from their study of 1969. His entire property and existing structure and proposed improvements are higher than 240 feet. He's roughly 4 feet above the base flood elevation. Carley asked if they have a septic system. Mr. Willeke said that they do. They have City water and a private septic system. They are not adding a bedroom. They are taking their master bedroom and making a bathroom, closet and hallway out of it. They are trading existing space for a new bump out for a new master bedroom. Carley asked if it would still be two bedrooms when completed. Mr. Willeke said that was correct. Willeke also stated that the Ordinance states that if the substantial improvements are above 50% of the fair market value they need a variance. Walker explained this to the Board. Norton asked if there would be another set of approvals required for a septic system. Walker stated that a subsurface septic would not be permitted in F1 district, but one does exist. Mr. Willeke stated that being served by municipal sewer and extending the main would be a financial hardship to them. The line isn't right in front of their home and it would be in the \$20,000 range per the quotes they got a few years back to connect. He does roadway work for his day job and right now municipalities are having a hard time finding people to put in quotes for their work. His company is out a few years for their road work. There may have been site conditions that prevented the City from extending the sewer line to their home as it stops right before their property. Their neighbor at #30 applied and received similar variances from the City. It wouldn't be fair to require them to connect when their neighbors didn't. They are higher above the base flood elevation than their neighbors. They are trying to make a modest improvement; a small expansion to their home.

Marshall asked what the estimated cost of the improvements is. Mr. Willeke said the he had one contractor tell him around \$100,000. Marshall asked what the current value of the structure is now. Mr. Willeke said about \$95,000.

In favor: Christopher Miller, 25 Portsmouth Street. He is their neighbor. His property exists by variance. The elevation of his property was higher than the relevant flood elevation. The national standard, Concord clings to the old Army Corp analysis, which has been superseded by FEMA updates. The applicant's don't live in a flood prone area.

Jim O'Shaughnessy, 26 Portsmouth Street. He moved into their home in 2011. He would like to support their application. It's an improvement to the neighborhood.

In opposition: none.

Code: none.

DECISION: #30 Portsmouth Street Marshall asked what they did for improvements and confirmed they didn't have to connect to the City sewer. Walker stated that case was an addition to their garage and an addition over the garage. Norton said it is a 1950's houses with new families. They are trying to build out. Walker: previously the ordinance didn't allow expansion in the Flood Hazard district. The fifty percent expansion by right was recently added.

Marshall is in favor of approving it based primarily on their property's being above the flood elevation, even though it is within the delineated flood plain. Carley said if the intent of the Ordinance is to protect from flooding, they do not violate that intent since they well above the BFE. Marshall stated that it is a clear hardship. He feels that way for both variance requests. Norton asked if there was another layer of approval for the septic so that if they do something to the house, will someone else looks at it. Carley stated that if there is a change in their septic it is a State approval. Walker advised that by State standards which operate under FEMA flood mapping the property is outside of the flood hazard zone.

A motion to approve the requests was made by Marshall seconded by Norton and passed by a unanimous vote.

**31-15** Oscar & Aurora M Pulido: Applicant wishes to enclose a replaced open porch and requests a Variance to Article 28-8-5, Non-conforming Structures, Section (3), to permit a replacement open porch to be enclosed for property at 81 Perley Street in an RD Residential Downtown District.

Oscar Pulido testified. The open porch was approved by the Building Inspector and it meets all the requirements of the Building Code. They would like to enclose the porch with a door and 4 season windows.

Walker stated that they have a building permit for the open porch. The Ordinance previously didn't allow for removal and replacement of non-conforming structures. That was changed a few years ago but only to allow in-kind replacements. It is nonconforming as it is in the front setback. If there is any significant change, such as enclosure, it would need to come before the Board for a variance.

Marshall asked Mr. Pulido why it is a hardship to have an unenclosed porch. Mr. Pulido felt that due to the inclement weather the porch rots, it affects the roof, etc. He also stated that it was a safety issue since he and his wife had both injured themselves with slip and fall accidents during the 5 months of winter last year. It will also protect against typhoons. Through the years there will be more

maintenance and wear and tear on the structure without enclosure. It adds beauty and adds tax value. Norton asked if there are any other buildings around with similar porches. Mr. Pulido said that there were quite a few of these types of porches in his neighborhood and they are enclosed.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve the request was made by Wallner seconded by Norton and passed by a 4-1 vote with Marshall in minority.

Marshall asked about the required front setback. Walker stated that the required front setback was 10 feet in this district. Marshall stated that the house may not make the setback and the porch may be right on the property line. Walker said that was correct. Carley stated that this was an old neighborhood with dense development. Wallner felt there was a reasonable use of an enclosed porch and it is what other neighbors enjoy. Winters felt that he already had the porch and isn't able to make complete use of it.

MINUTES: A motion to approve the Minutes from August 2015 was made by Marshall, seconded by Winters and passed by a 3-0 vote.

A TRUE RECORD ATTEST,

<u>Rose M. Fífe</u>, clerk

ZONING BOARD OF ADJUSTMENT